excuse the delay or non-performance, the court will not interpolate such provision, because to do so would be to make a contract different from that the parties themselves have made. *Ptacek* v. *Pisa,* 231 Ill. 522, 83 N. E. 221, 14 L. R. A. (N. S.) 537; *Anderson* v. *May,* 50 Minn. 280, 36 Am. St. Rep. 642; 6 R. C. L. 997. It was held in *Nordyke & Marmon Co.* v. *Kehlor,* 155 Mo. 643, 56 S. W. 287, that where parties had contracted for the erection of a flour mill of a standard of efficiency which did not exist and could not be obtained, this would excuse performance, notwithstanding the person pleading such facts had the means of discovering the mistake and by diligence might have avoided it. While at first glance it would seem that this case is similar to the principal case, the distinguishing feature is that in the principal case it was possible to produce the product contracted for and the delay was avoidable, while in the *Nordyke* case the impossibility of producing the article contracted for amounted to a mutual mistake of fact which excused performance. Unavoidable cause as used in a contract in much the same connection as in the instant case has been defined to be such a cause as is inevitable and such that no human power can prevent. *City of Mankato* v. *Barber Asphalt Paving Co.,* 142 Fed. 329, 345, 73 C. C. A. 439. It is quite evident that the Carnegie Company fails in the case under consideration for the reason that it cannot show that the cause of delay was such an inevitable one, even though it was not caused through culpable negligence.

CORPORATIONS.—RIGHT OF A COURT TO PASS, OF ITS OWN MOTION, ON THE LEGAL STATUS OF A CORPORATION.—X company instituted a suit against the defendant because of the alleged infringement of certain patent rights. Before trial plaintiff company was allowed to intervene and prosecute the suit in lieu of X company, plaintiff company having just been organized for the purpose of possessing itself of and granting licenses that were owned by X company and two other companies. The object of this combination was to put an end to the numerous infringement suits which were constantly arising between the three companies, each of which disputed the patent rights of the other two. The plaintiff company was organized by five attorneys, who had absolutely no financial interest therein, and who immediately turned over their offices as directors to the representatives of the three companies more directly and vitally interested. *Held,* that the district court, in which the suit was instituted, committed error in deciding, of its own motion, that the plaintiff was not a corporation, and hence had no standing in court. *The Kardo Co.,* substituted for *The American Ball Bearing Co.* v. *Henry J. Adams,* dealing as *Reo Motor Sales Co.,* (C. C. A. 6th, 1916), — Fed. —.

This case is noteworthy, first, because of the exhaustive and comprehensive discussion of the modern doctrine of *de facto* corporations contained therein, and, secondly, because of the jurisdictional question involved. As to this latter point, it might appear that the decision is in direct conflict with the decision in the case of *The Great Southern Fire-Proof Hotel Co.* v. *Jones, et al.,* 177 U. S. 449. A careful examination, however, reveals the

fact that a question of an entirely different character was presented to the court in that case. In the principal case the district court took it upon itself to investigate all the details of the organization of the plaintiff company, in spite of the fact that the declaration alleged that the said company was a corporation duly organized and existing under the laws of Ohio. Such an allegation submitted the question of incorporation and organization as an issuable fact. Furthermore, as the suit pertained to a controversy concerning a patent right, it was one which was cognizable only in the United States courts; and no question of diversity of citizenship was involved. Hence, the declaration set forth a case over which the district court had jurisdiction, and it seems that it should have allowed a trial on the merits. On the other hand, the declaration in *The Fire-Proof Hotel Co.* case disclosed on its face that the plaintiff was a partnership and not a corporation; and, as the jurisdiction of the court depended entirely upon diversity of citizenship, it dismissed the case of its own motion. The plaintiff's own admissions were the sole cause of the action taken by the court. For similar cases see, *Louisville, Cincinnati & Charleston R. Co.* v. *Leston,* 2 How. 497; *Ohio & Miss. R. R. Co.* v. *Wheeler,* 1 Black 286; *Steamship Co.* v. *Tergman,* 106 U. S. 118; *Chapman* v. *Barney,* 129 U. S. 677. In the principal case the district court did not have the benefit of such admissions, and it seems that the circuit court of appeals was correct in its conclusion that the powers of the United States courts have not been extended or enlarged as regards the question raised in *The Fire-Proof Hotel Co.* case by virtue of § 37 of the JUDICIAL CODE (1875), on which the district court based its decision.

CORPORATIONS.—RIGHT OF STATE TO TAX FOREIGN CORPORATIONS FOR PRIVILEGE OF DOING INTRASTATE BUSINESS.—Defendant company, an Ohio corporation, filled orders for its machines, which orders were solicited by its agent in the state of Virginia. As an incident to his duties of soliciting such orders, this agent kept in stock ribbons, repairs, paper, etc., which he sold to customers. Furthermore, he kept machines on exhibit; exchanged new machines for old ones; rented new or used machines whenever the opportunity presented itself; and entered into "repair contracts" with the customers, the company employing a mechanic whose duty it was to make all necessary repairs. All contracts closed and all sales made by the agent were required to be reported to and approved by the home office. *Held,* that the company was engaged in intrastate business and liable to the payment of a statutory fine imposed for failure to pay a license fee. *Dalton Adding Machine Co.* v. *Comm.* (Va. 1916), 88 S. E. 167.

Manufacturing corporations and all other corporations whose business is of a local and domestic nature cannot carry on their business in another state without submitting to whatever conditions precedent the state may see fit to impose. *Bank of Augusta* v. *Earle,* 13 Pet. 519; *Paul* v. *Virginia,* 8 Wall. 168; *Liverpool Ins. Co.* v. *Mass.,* 10 Wall 566; *Cooper Mfg. Co.* v. *Ferguson,* 113 U. S. 727; *Phil. Fire Ass'n.* v. *New York,* 119 U. S. 110. The paramount question in each case, however, calls for an investigation